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Question of enforced or involuntary disappearances

Report of the Secretary-General**

Summary

In its resolution 59/200 on the question of enforced or involuntary disappearances, the General Assembly addressed requests to Governments, to the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights and to the Secretary-General, including a request to the Secretary-General to submit to it, at its sixty-first session, a report on the steps taken to implement the resolution. The present report is submitted in accordance with that request.

In a note verbale dated 29 September 2005, the Secretary-General invited Governments to transmit any information pertaining to the implementation of resolution 59/200. Replies have been received from the Governments of Argentina, Azerbaijan, Chile, Colombia, Costa Rica, Georgia, Kuwait, Lebanon, Mauritius, Mexico, Panama, the Russian Federation, the Syrian Arab Republic, Turkey, Ukraine and the United Arab Emirates. The responses of these Governments are summarized in the present report.

This report also includes information on the activities of the Working Group on Enforced or Involuntary Disappearances and the recent adoption by the Human Rights Council of the International Convention for the Protection of All Persons from Enforced Disappearance by its resolution 2006/1.

* A/61/150.

** The present report is being submitted after the deadline so as to include as much updated information as possible.

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In compliance with the request contained in General Assembly resolution 59/200, this report also includes information on the activities undertaken to promote the Declaration on the Protection of All Persons from Enforced Disappearance, as well as obstacles to the realization of its provisions and ways of overcoming those obstacles.

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I. Introduction

1. In its resolution 59/200, entitled "Question of enforced or involuntary disappearances", the General Assembly reaffirmed that any act of enforced disappearance is an offence to human dignity and a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

2. In that resolution, the General Assembly reminded Governments that impunity contributed to the perpetuation of the phenomenon of enforced disappearance and that if allegations were confirmed perpetrators should be prosecuted. It expressed its profound thanks to the many Governments that had cooperated with the Working Group on Enforced or Involuntary Disappearances and replied to its requests for information, and to the Governments that had invited the Working Group to visit their countries.

3. The General Assembly invited the Working Group to identify obstacles to the realization of the provisions of the Declaration on the Protection of All Persons from Enforced Disappearances and to recommend ways of overcoming those obstacles. It also requested the Secretary-General to continue to provide the Working Group with all of the facilities that it required to perform its functions, to keep the Assembly informed of the steps the Secretary-General took to secure the widespread dissemination and promotion of the Declaration, and to submit to it at its sixty-first session a report on the steps taken to implement the resolution. The present report is submitted to the General Assembly in accordance with that request.

4. In the same resolution, the General Assembly welcomed the decision of the Commission on Human Rights to convene the intersessional open-ended working group to elaborate a legally binding instrument on enforced disappearances before its sixty-first session with the view to the completion of its work. On 29 June 2006, at its first session, the Human Rights Council adopted, by resolution 2006/1, the International Convention for the Protection of All Persons from Enforced Disappearance and recommended its adoption by the General Assembly.

5. In its resolution, the General Assembly encouraged States to provide concrete information on measures taken to give effect to the Declaration on the Protection of All Persons from Enforced Disappearance, as well as obstacles encountered. In addition, it called upon Governments to take steps to ensure that when a state of emergency was introduced, they protected against enforced disappearance; urged them to take steps to protect witnesses, human rights defenders and lawyers and to make provision in their legal systems for victims to receive reparation; and requested them to consider disseminating the Declaration in local languages.

6. In a note verbale dated 29 September 2005, the Secretary-General invited Governments to transmit relevant information pertaining to the implementation of the resolution. Replies were received from the Governments of Argentina, Azerbaijan, Chile, Colombia, Costa Rica, Georgia, Kuwait, Lebanon, Mauritius, Mexico, Panama, the Russian Federation, the Syrian Arab Republic, Turkey, Ukraine and the United Arab Emirates. The responses of these Governments are summarized in the present report. The full text of each response is available on the webpage of the Working Group on Enforced or Involuntary Disappearances at http://www.ohchr.org/english/issues/disappear/index.htm.

II. Replies received from Governments

A. Argentina

[Original: Spanish]
[24 October 2005]

7. According to information received from the Government of Argentina, on a national level, Argentina has taken many measures to prevent enforced disappearances since the end of the military dictatorial regime. The 1994 constitutional reform established the right to bring habeas corpus proceedings before the courts in cases of enforced disappearance. Courts investigating enforced disappearance cases have held since 1999 that State records containing information on missing persons may not be modified. Furthermore, the National Memorial Archive, established by Decree No. 1259, contains testimony concerning people who were disappeared, killed or detained, and information on the circumstances surrounding the incidents in question, secret detention centres, forms of punishment and those perpetrators it has been possible to identify. It also contains some copies of judicial proceedings. Finally, a number of State bodies are currently investigating secret detention centres and are making arrangements to recover many of them for their evidentiary value and for historical purposes. On an international level, Argentina has been an active participant in preparing the draft international convention against enforced disappearance. The delegation of Argentina also proposed resolution 2005/66 on the right to the truth adopted by the Commission on Human Rights at its sixty-first session.

8. In order to ensure that enforced disappearances are punished, Argentina has been working towards defining enforced disappearance as a free-standing crime. A bill defining enforced disappearance as a separate offence is currently before the Chamber of Deputies. In addition, case law has been applied to interpret enforced disappearance as a crime under Argentine legislation.

9. The Argentine Republic has also taken measures to protect people during states of emergency. Under the Constitution, the right to bring a habeas corpus motion cannot be suspended during a state of emergency. Argentina has ratified and incorporated into its constitution the Inter-American Convention on the Forced Disappearance of Persons which states that exceptional circumstances cannot be invoked to justify the forced disappearance of persons. In addition, it has adopted the MERCOSUR Asunción Protocol on the Commitment to the Promotion and Protection of Human Rights, which may be invoked when violations of human rights occur during states of emergency.

10. Argentina has taken measures to bring those responsible for crimes of enforced disappearance to justice. Around 60 judicial investigations are currently under way in Argentina, and proceedings are ongoing in foreign courts which have tried in absentia members of the Argentine military. The pardons granted in the past to those convicted in the trials of the military juntas and other senior military officers are now subject to judicial review. The Clean Slate and Due Obedience Acts, which granted impunity to middle- and lower-ranking members of the military and the security forces during the military dictatorship were repealed in June 2005. The Supreme Court has also ruled that statutes of limitations do not apply for crimes against humanity.

11. In order to facilitate the investigation of cases of enforced disappearance, the Argentine Republic established on 15 December 1983 the National Committee on the Disappearance of Persons, by Decree No. 187. In 1996, the Argentine justice system recognized that victims of enforced disappearances and their families have a right to the truth, and since then proceedings known as "truth trials" have been brought in nearly every federal court in the country. In addition, the National Commission on the Right to an Identity was created in 1992, with the main task of searching for and determining the whereabouts of disappeared children whose identity is known and of children born to women in detention. In addition, the National Genetic Databank was created as an aid in determining the identity of missing persons.

12. Further, Argentina has taken measures to compensate the victims of enforced disappearance. In 1994, Act No. 24.411 was passed, allowing financial reparation to be made to the victims of enforced disappearance and the successors of people killed by the military, security forces or paramilitary groups prior to the restoration of democracy. In addition, Act No. 25.914, adopted on 30 August 2004, provides for compensation to people born to mothers deprived of their liberty, to minors who were kept in detention because their parents had been arrested or disappeared for political reasons and to victims of identity-switching.

B. Azerbaijan

[Original: Russian]
[17 February 2006]

13. Information provided by the Government of Azerbaijan states that the legislation of Azerbaijan expressly provides for protection against enforced disappearance. Articles 110 and 144 of the Azerbaijani Criminal Code of 30 December 1999 stipulate that the detention, remand in custody or abduction of a person by or with the knowledge of a State actor and the subsequent refusal to provide information on his or her whereabouts, if part of a large-scale or systematic attack on the civilian population, is punishable by deprivation of liberty or by a life sentence. More broadly, pursuant to article 28 of the Constitution, all persons have the right to freedom. Any person deprived of his or her liberty shall be held in officially recognized places of detention and brought promptly before the judicial authorities. There are no secret detention centres in Azerbaijan. Pursuant to article 147, paragraph 3, of the Code of Criminal Procedure, illegal detention of a person entails legal liability.

14. The Government of Azerbaijan has ensured that when a state of emergency is introduced its citizens are protected. Pursuant to articles 21 and 30 of the State of Emergency Act of 8 December 2004, measures applied in emergency situations are to be implemented within limits commensurate with the gravity of the situation and in accordance with the procedure set out in the law. Furthermore, pursuant to the Act, in the event of a state of emergency, the Ministry of Foreign Affairs must inform the Secretary-General of the United Nations and the Secretary-General of the Council of Europe of the temporary restrictions placed on citizens' rights and freedoms, stating why such a decision was taken.

15. On 11 December 1998, Azerbaijan adopted the State Protection Act, which defines measures to guarantee the safety and social protection of victims and

witnesses in criminal cases and other persons participating in criminal trials. In the Code Of Criminal Procedure, a person who has suffered as a result of criminal activities has a right to take part in those proceedings as a victim or private prosecutor and receive compensation.

C. Chile

[Original: Spanish]
[17 February 2006]

16. According to information received from the Government of Chile, since its return to democracy in March 1990, Chile has taken legal and administrative measures to pursue truth and justice and to compensate victims of human rights violations committed under the military regime, as well as their families. The work undertaken by the National Commission on Truth and Reconciliation in 1990, and the publication of its report in 1991, were the first steps in this direction.

17. In 1992, the National Corporation for Compensation and Reconciliation was established by Act No. 19.123, and today its mandate of ensuring that justice is upheld in trials and of advocating for social rehabilitation and moral reparation is continued by the Human Rights Programme of the Ministry of Internal Affairs. In 1991, the Ministry of Health set up a programme for reparation and comprehensive health care (PRAIS). Recently, legislation has been adopted to increase compensatory allowances for relatives of persons who disappeared or were executed under military regimes. In addition, health benefits for torture victims and other persons affected by human rights violations, including relatives of victims of enforced disappearance, are now a legal requirement. In August 2003, President Ricardo Lagos made public his human rights proposal, entitled "There is no tomorrow without yesterday", which contains a series of measures aimed at clarifying human rights violations that took place under the military regime and ensuring compensation for victims. One such measure is the appointment of special judges to hear long-pending cases of enforced disappearance.

18. The nationwide criminal procedure reform launched in mid-2005 also has had far-reaching consequences for the prevention of the practice of enforced disappearances. Under the new system, the tasks of investigating and judging cases no longer come before the same judge. Investigations are now conducted by a public prosecutor in cooperation with the police, and proceedings are oral, public and adversarial. The new Code of Criminal Procedure, among other things, guarantees the rights of detainees, limits the period of police custody, and provides for special hearings conducted by a "guarantee judge" mandated to establish the lawfulness of the detention and to safeguard the rights of detainees. The new Code also makes provision for *amparo* before the judge.

19. The democratic Governments of Chile have firmly rejected the applicability of the Decree Law on Amnesty; however, motions to repeal the Decree Law have not received the necessary parliamentary majority. Nevertheless, since 1998, Supreme Court judges have often nullified military tribunal judgements by blindly applying the Decree Law on Amnesty. In addition, missing detainees are no longer considered the victims of homicide, but are rather considered to be victims of kidnapping, which under law is an offence of a continuous nature that must remain pending until such time as the fate or whereabouts of the victim is determined. In October 2005, a

constitutional reform established new regulations governing states of emergency provided in the Constitution, so as to ensure compatibility with international human rights instruments. Further, Chile has continuously cooperated with the Working Group on Enforced or Involuntary Disappearances.

20. Internationally, Chile has participated actively with the intersessional Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances. For many years, Chile also took the lead in sponsoring the resolution entitled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", which was recently adopted by the General Assembly.

D. Colombia

[Original: Spanish]
[13 May 2005; 12 January 2006]

21. According to information provided by the Government, enforced disappearance is defined as a separate criminal offence in Colombia. Article 12 of the Colombian Constitution, adopted in 1991, expressly prohibits the enforced disappearance of persons. In addition, Act No. 589 of 6 July 2000 criminalizes genocide, enforced disappearance, forced displacement and torture.

22. The Commission for Research on Disappeared Persons was established in 2000 by Act No. 599. Its role is to support and promote the investigation of enforced disappearances and to formulate, evaluate and support plans to search for disappeared persons and establish working groups to deal with specific cases. The Commission has introduced a national register of disappeared persons and has implemented an emergency search mechanism as well as measures relating to the administration of the property of persons and victims of the crime. Act No. 599 also provides that the State has at all times the obligation to take the necessary steps to establish the whereabouts of the victim and to prohibit pardons or amnesties for the perpetrators of such crimes.

23. There have been many recent developments in Colombia in the context of enforced disappearances. On 12 May 2005, the Inter-American Convention on the Forced Disappearance of Persons entered into force in Colombia. In addition, the Ministry of the Interior and the Ministry of Justice are currently drafting a decree concerning the establishment of a unified register of disappeared persons. In its 2005 budget, the Ministry of Finance and Public Credit allocated money for the setting up of the National Registry of Disappeared Persons, regulated under Decree No. 4218 of 24 November 2005. The National Police have been promoting the drafting of a standing institutional directive that would make it possible for each department to establish a working group to take active measures to address the situation of enforced disappearance and submit periodic reports on the subject. In addition, since mid-2005, the Presidential Human Rights Programme has made progress in formulating a draft public policy on enforced disappearance.

E. Costa Rica

[Original: Spanish]
[31 October 2005]

24. According to the Government of Costa Rica, the disappearance of persons as a result of acts organized by the State or its agents is a phenomenon unknown in the country. Nevertheless, Costa Rica ratified the Inter-American Convention on the Forced Disappearance of Persons on 2 June 1996, and the Inter-American Court of Human Rights is based in San José. In addition, Costa Rica has worked with enthusiasm with the intersessional working group on a draft legally binding normative instrument for the protection of all persons from enforced disappearance.

25. In Costa Rica, when the police and judicial authorities are informed of the disappearance of a person, the matter is always officially investigated. In all cases there is an investigation by the police and, where applicable, the Judicial Investigation Department.

F. Georgia

[Original: English]
[27 February 2006]

26. Information received from the Government of Georgia states that the term "enforced involuntary disappearance" has not been directly incorporated as a crime in the Criminal Code of Georgia. Nonetheless, criminal legislation provides for safeguards from multiple violations of human rights that are linked with forced disappearance or are closely related to it, such as illegal deprivation of liberty (art. 143), illegal detention or imprisonment (art. 147) and torture or inhuman or degrading treatment (art. 144).

27. In accordance with article 46 of the Constitution of Georgia as well as the Georgian Law Regulating the State of Emergency, during a state of emergency, the President may place limitations on the right to liberty but only with consent of Parliament, in exceptional situations and for the interests of the entire community. Moreover, the right to personal integrity and the respect for human dignity may not be restricted under any circumstances.

28. The legislative amendments to the Code of Criminal Procedure of Georgia, which took effect at the beginning of January 2006, have implications on how enforced disappearances of persons are treated. Every time a criminal act is reported, even if it is reported anonymously, the investigator/prosecutor must commence an investigation. In addition, the Code of Criminal Procedure now provides for a variety of special measures of protection that may be applied to witnesses, victims and other persons participating in criminal proceedings.

29. With regard to reparations, according to article 42 (9) of the Georgian Constitution, any person having unlawfully sustained a damage inflicted by State agencies, self-government bodies and their representatives is guaranteed full compensation at the expense of the State and determined through court proceedings. Moreover, the Code of Criminal Procedure stipulates that a person suffering property, physical or moral damage resulting from unlawful acts, including arbitrary detention and other unlawful or arbitrary acts of law enforcement bodies, is entitled to compensation.

G. Kuwait

[Original: Arabic]
[21 December 2005]

30. According to information provided by the Government of Kuwait, ever since it was established as a modern State, Kuwait has considered that the act of enforced disappearance is a material violation of human rights, particularly of the right to peacefully enjoy freedom. Article 31 of the Constitution states that no one may be arrested, imprisoned or searched other than in accordance with the law, and article 184 of the Criminal Code [No. 16/1980], as amended, provides for penalties should this occur. The Code of Criminal Procedure and Trials No. 17/1960, as amended, devotes a special section to acts such as arrests or placements of persons in preventive detention as carried out by investigating authorities or the courts. Articles 48-74 of the Code deal with the subject of arrests, the bodies competent to issue arrest warrants and the duration of arrests. The articles are designed to guarantee the lawfulness of arrests and prevent the arbitrary exercise of this right in a manner that results in illegal abuses by the authorities. The authorities are held legally accountable for the consequences of any harm they do, during the discharge of their official functions, by subjecting persons to arbitrary treatment. Because of the close link between these measures and the question of enforced disappearance, these legislative protections are of the utmost importance.

31. The State of Kuwait has acceded to many international instruments, including the International Covenant on Civil and Political Rights. Pursuant to Act No. 12 of 1996, it is required to adopt legislative measures to eliminate the phenomenon of enforced disappearances in accordance with applicable domestic law, without prejudice to any of the principles enshrined in international treaties and without violating the domestic laws which are applied impartially and fairly in the State of Kuwait.

32. With regard to the dissemination of the text of the Declaration on the Protection of All Persons from Enforced Disappearance, the Government of Kuwait has no objection to doing so and would like to point out that all the international instruments that it signs or ratifies are published in the Official Gazette.

H. Lebanon

[Original: Arabic]
[3 December 2005]

33. Information provided by the Government of Lebanon states that the subject of enforced disappearances and abductions receives the full attention of the internal security forces in Lebanon, which take whatever action is necessary as soon as a disappearance is reported. The internal security forces circulate names and a physical description of the missing person and the competent authorities conduct intensive searches and inquiries in order to ascertain the whereabouts of the person and to secure his or her return. They take legal action against those responsible for the enforced disappearance. The internal security forces also make every effort to protect witnesses, human rights defenders, lawyers and families of the disappeared. In addition, there are also several committees and grass-roots organizations concerned with Lebanese prisoners and detainees found in Israel and the Syrian Arab Republic.

34. Though enforced disappearance is not defined as a separate crime in Lebanese legislation, personal freedom is safeguarded in Lebanon by article 8 of the Constitution as well as the numerous international treaties Lebanon has signed on the subjects of hostage-taking, terrorism, organized crime and trafficking.

I. Mauritius

[Original: English]
[9 January 2006]

35. According to the Government of Mauritius, there are no enforced disappearances in Mauritius. Sections 5 and 15 of the Constitution provide for the protection of a person's liberty and freedom of movement. Under section 258 of the Criminal Code, the arrest and detention of a person without an order from a constituted authority amounts to a case of sequestration or unlawful arrest and is a punishable crime. Any arrest or detention must be justified and the individual must be brought under judicial supervision and control so as to prevent arbitrary detention. Relatives of the person arrested are made aware of the reasons for his or her arrest and the place of his or her detention. In addition, all witnesses in criminal cases are protected by law in Mauritius.

J. Mexico

[Original: Spanish]
[15 November 2005]

36. Information provided by the Government of Mexico states that at the federal level, enforced disappearance constitutes a criminal offence. Article 215-A of the Federal Criminal Code states that "a public official who, irrespective of whether he or she has taken part in the legal or illegal detention of one or more people, maliciously facilitates or abets that person's secret imprisonment in any form commits the offence of enforced disappearance".

37. Several states have also defined enforced disappearances as a separate crime in their criminal codes. Criminal legislation in the State of Aguascalientes includes the offence of enforced disappearance of persons, punishable with 10-30 years' imprisonment. In the State of Durango, subtitle 3 of the state criminal code refers to the offence of enforced disappearance, defined as an offence against freedom and personal safety. On 10 October 2005, the Governor of the State of Guerrero issued a decree ordering publication of the Act on the Prevention and Punishment of the Enforced Disappearance of Persons. The Government of the State of Michoacán issued an administrative decision establishing the Michoacán State Commission on the Investigation of the Involuntary Disappearance of Persons, published on 19 December 2002 in the state Official Gazette. In addition, a draft bill on the prevention, punishment and eradication of the enforced disappearance of persons in the State of Michoacán as well as a draft decree which would add enforced disappearance as an offence under the state criminal legislation are currently being debated by the Office of Legal and Legislative Affairs of the Department of the Interior, in conjunction with the State Attorney-General's Office. Further, the State of Querétaro is formulating a bill on the criminalization of the offence of enforced disappearance. The draft is currently being evaluated with a view to its

incorporation in the criminal code and code of criminal procedure of the State of Querétaro.

38. Mexico also has several specific programmes set up to investigate crimes of enforced disappearance. The Office of the Special Prosecutor was established within the Office of the Attorney-General in response to the continuing demand for justice on the part of family members of disappeared persons and society at large and to efforts at the federal level to criminalize acts of enforced disappearance. The Office investigates acts likely to constitute a federal offence perpetrated directly or indirectly by public officials against persons with links to former social or political movements. In addition, the National Human Rights Commission has a programme on persons presumed disappeared, run by the Office of the First Inspector-General. This programme provides for the processing and investigation of complaints relating to persons whose whereabouts are unknown and whose disappearance appears to involve participation by some public authority or official. During the period of January to September 2005, the National Human Rights Commission received 10 complaints of enforced or involuntary disappearances. Over the past year, the National Human Rights Commission formulated two recommendations (9/2005 and 15/2005) in connection with the offence of enforced or involuntary disappearance.

39. The Ministry of Public Security conducts ongoing activities to promote and raise awareness of human rights in relation to public security for officials working for the Ministry. Such activities include courses, workshops, conferences, forums, seminars, diploma courses, round tables and specialized events on human rights issues affecting public security.

K. Panama

[Original: Spanish]
[8 March 2006]

40. According to the Government, Panama has recently been making real efforts to clarify cases of enforced disappearance. On 2 March 2005, the post of Special Investigative Officer was established to deal exclusively with such offences. The Special Investigative Officer is currently investigating cases of enforced disappearance that have not been resolved or have never been investigated and must be concluded. At present, the National Assembly is also debating a draft law to classify enforced disappearance as a criminal offence, with penalties similar to those for homicide. This draft law makes provision for mitigating circumstances, stipulates trial by jury and assigns competence for the trial of such offences to the high court. Finally, the Supreme Court of Justice has held that enforced disappearances should not be subject to any statute of limitations.

41. In the investigation of offences involving enforced disappearances, victims, relatives and witnesses have been provided with protection under the Witness Protection Act. However, no legal protection has been provided for any intimidation or ill-treatment to which relatives may be subjected.

42. Regarding fair and adequate reparation, there is no specific provision under Panamanian law that recognizes the right to financial reparation. Nevertheless, the complainant may bring indemnification proceedings in a criminal court or separately in a civil court, upon completion of the criminal proceedings.

L. Russian Federation

[Original: Russian]
[26 December 2005]

43. According to information provided by the Russian Federation, abductions and hostage-taking are a major social and political problem in the Chechen Republic and thus in the Russian Federation.

44. The Office of the Prosecutor-General of the Russian Federation has initiated a review of the efforts of law enforcement agencies in the Southern Federal Area to combat abduction and other forms of "involuntary disappearance". A comprehensive programme to prevent abductions and trace missing persons is being developed by the Office of the Procurator of the Chechen Republic, the regional headquarters of the Ministry of Internal Affairs and the office of the Federal Security Service of the Chechen Republic.

45. Law enforcement officials may be held liable for multiple offences under article 17 of the Criminal Code of the Russian Federation if their actions result in enforced or involuntary disappearances. Article 285 of the Criminal Code makes it an offence for an official to exercise his or her powers in a manner inconsistent with the interests of the service.

46. During states of emergency, chapter 6 of the Federal Constitutional Act on States of Emergency protects and safeguards the rights of citizens and specifies the liability of citizens and officials. Persons who exercise their emergency powers and authority in an improper manner incur liability in accordance with the laws of the Russian Federation. Officials must notify a detainee's relatives of his or her detention, even in a state of emergency, though this requirement may be waived if the detention must be kept secret for the preliminary investigation.

M. Syrian Arab Republic

[Original: Arabic]
[2 March 2006]

47. Information provided by the Syrian Arab Republic states that Syria considers enforced disappearance to be a serious violation of human rights, particularly the right to enjoy freedom and not be detained arbitrarily. According to article 25 of the Constitution of the Syrian Arab Republic of 1973, the State guarantees its citizens their personal freedom and preserves their security. Pursuant to article 28 of the Constitution, no one may be detained other than in accordance with the law and no one may be subjected to torture or degrading treatment. Article 357 of the Syrian Criminal Code provides that any official who detains or imprisons a person in circumstances other than those provided for by law is subject to a penalty.

48. With regard to the dissemination and promotion of human rights, the Ministry of the Interior participates in human rights seminars and courses which are organized at national, regional and international levels. Human rights have been included as a subject in officer training curricula taught at officer training colleges and in courses for district chiefs and officers and individuals taking basic courses at the police academy.

N. Turkey

[Original: English]
[22 February 2006]

49. According to the Government of Turkey, Turkey has many mechanisms in place to protect persons from enforced disappearances in particular and from related human rights violations in general. Allegations of enforced disappearances can be submitted to the Bureau for Inquiry on Allegations of Human Rights Violations, established in March 2004 within the Inspection Board of the Ministry of the Interior. If the Bureau deems it necessary, public inspectors are appointed to conduct an investigation and may monitor police stations and detention facilities. In addition, a specialized branch named "The Gendarmerie Human Rights Violations Investigation and Evaluation Centre" was established on 26 April 2003 to investigate and evaluate allegations of human rights violations that occur specifically in the area of responsibility of the Gendarmerie.

50. The Law on the Right to Information No. 4982, adopted on 9 October 2003, sets forth principles and procedures of the exercise of the right to information. This law may serve as an effective tool for tracing the whereabouts of persons deprived of their liberty, and is available not only to family members or their lawyers but also to any other person having a legitimate interest in such information.

51. Article 19 of the Constitution of the Republic of Turkey safeguards the right to personal liberty and security. The new Turkish Criminal Code, introduced by Law No. 5237 in 2004, incorporates crimes against humanity as an offence and also defines the offence of "deprivation of liberty" in a very broad manner. The Code of Criminal Procedure, introduced in 2004 by Law No. 5271, provides for effective safeguards to protect and monitor the exercise of the rights of individuals in custody or detention. In addition, Law No. 466 provides compensation for persons who have been unlawfully apprehended or arrested.

52. Article 25 of the Regulation on Apprehension, Custody and Taking of Statements stipulates that part of the judicial duties of the Office of Public Prosecution is to examine and investigate cells, interview rooms and the situation of persons taken into custody. Law No. 4681, which was adopted by the Parliament on 14 June 2001, has introduced the establishment of "prison monitoring boards". Such boards may carry out inspections in penal institutions at any time they wish, and must visit every institution in their district at least once every two months.

O. Ukraine

[Original: Russian]
[27 February 2006]

53. Information provided by the Government of Ukraine states that although legislation in the Ukraine does not expressly provide for protection against enforced disappearance, article 371 of the Criminal Code criminalizes acts involving knowingly unlawful detention and article 146 of the Code provides the penalties for unlawful deprivation of liberty.

54. Measures for ensuring the safety of persons involved in criminal proceedings can be found in the Parties to Criminal Proceedings (Security) Act. Article 2 of the

Act states which persons have the right to protection during criminal proceedings and article 7 explains which protective measures may be employed.

55. In terms of reparation, under the Injury Compensation Act, Ukrainian citizens are entitled to claim compensation for unlawful arrest and remand in custody. Moreover, on 18 January 2006, the Parliament of Ukraine discussed a bill on State compensation for material damage caused to citizens who have been victims of crime.

56. Under the State of Emergency Act, certain rights, such as the right to liberty, are protected during a state of emergency.

P. United Arab Emirates

[Original: Arabic]
[30 January 2006]

57. According to the Government of the United Arab Emirates, measures to prevent enforced disappearances are of particular importance in the context of the obligation to avoid the arbitrary deprivation of life. Article 344 of the Federal Criminal Code fixes the penalty for a person who himself or through others illegally abducts, arrests, detains or otherwise deprives a person of his liberty.

58. At present there is no law regulating the situation in which a state of emergency is declared. However, a draft law has been transmitted to the Department of Legal Advice and Legislation at the Ministry of Justice defining safeguards to be provided for persons who are arrested following the declaration of a state of emergency and the measures to be taken in such a situation.

59. The subject of victims' rights was the focus of the Third Conference of the Egyptian Association of Criminal Law, held from 12 to 14 March 1989 and attended by many Arab States. The Conference issued several recommendations with regard to the offence of enforced disappearances and the need for the psychological and medical rehabilitation of victims who are rescued from their captors. In an experiment undertaken by the Ministry of the Interior of the United Arab Emirates, social support centres were established to play the role to which the recommendation refers.

III. Activities of the Working Group on Enforced or Involuntary Disappearances during the period under consideration

60. Established by resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights, the Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a global mandate. The Working Group has transmitted more than 50,000 individual cases to Governments in more than 90 countries. In the period covered in the Working Group's annual report to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/56 and Add.1 and Corr.1), the Working Group transmitted to Governments in 22 countries 535 newly reported cases of disappearances. During the same period, the Working Group clarified 1,309 cases in 17 countries, a considerable increase over previous years. This is due in large

measure to an enhanced capacity of the secretariat to address a backlog of unprocessed cases, in particular from Sri Lanka.

61. In its annual report, the Working Group also noted with great concern the large number of reports of disappearances transmitted during the period under consideration. It highlighted developments in regard to the practice of disappearance and the process of clarification of cases. The Working Group continued to remind Governments of their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance. In addition, it stated its concern over reports it had received of the disappearance of children and, in a few cases, of physically and mentally challenged persons. It also stressed its grave concern that anti-terrorist activities were being used by an increasing number of States as an excuse for not respecting the obligations of the Declaration.

62. The Working Group held its seventy-fifth session from 26 May to 3 June 2005 in Bangkok. The meeting of the Working Group was held for the first time in Asia in recognition of the increasing number of cases of disappearances received from across the region.

63. At the invitation of the Government, the Working Group visited Nepal from 6 to 14 December 2004. The purpose of the visit was to discuss the cases of enforced or involuntary disappearances received and transmitted by the Working Group to the Government of Nepal and to examine the situation of disappearances in Nepal in the light of international human rights standards, especially the Declaration on the Protection of All Persons from Enforced Disappearance. A significant increase in the number of cases of enforced disappearances reported to the Working Group during the previous two years led to the request for a visit. The delegation held meetings with ministers, judges, army officers, non-governmental organizations and relatives of the disappeared, among others. The Working Group made recommendations to amend Nepalese criminal law to create a specific crime of enforced or involuntary disappearance, to amend the Army Act, to release full and complete details of all court-martial proceedings undertaken in the previous two years and in the future, to ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, to rescind the Terrorist and Disruptive Activities (Control and Punishment) Ordinance, to protect human rights defenders, to strengthen the role of the National Human Rights Commission and to give it unhindered access to all places of detention, to evaluate the future participation of Nepalese security forces in United Nations peacekeeping missions and to ensure that the Supreme Court considers a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court.

64. The Working Group also conducted an official mission to Colombia from 5 to 13 July 2005 following an invitation extended in 2003 by the Vice-President of the Republic. In the context of the visit, the Working Group met officials and representatives of the various government institutions, including the Minister for Foreign Affairs, the Minister of the Interior and Justice, the Office of the High Commissioner for Peace, the Attorney-General, the Procurator-General and the Ombudsman. In addition, field visits were conducted to the cities of Medellin and Barrancabermeja, where the Working Group held important meetings with the most senior local civilian and police authorities. The Working Group made general and specific recommendations to halt the continuing pattern of disappearances in the country, to protect the families of victims and non-governmental organizations

working to discover the fate or whereabouts of disappeared persons, to address the problem of underreporting of cases of disappearances, to align domestic legislation with the State's obligation under the Declaration on the Protection of the Rights of All Persons from Enforced Disappearance, and to implement more effectively the existing legal mechanisms on disappearances in Colombia.

65. The Working Group has four further country visits that are being prepared for the next year, one to Guatemala in late 2006 and the other three to Nicaragua, Argentina and the Russian Federation in 2007.

66. In accordance with the request of the General Assembly in its resolution 59/200 that the Working Group consider the question of impunity, the Working Group, during its seventy-seventh session, adopted a general comment on article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance (see E/CN.4/2006/56, para. 49). The general comment clearly states what kind of amnesty laws are contrary to the Declaration and establishes limits on laws and processes that are designed to produce genuine and sustainable peace. In it, the Working Group specifies the conditions under which pardons and mitigating benefits to alleged perpetrators of disappearances are permissible. In any peace and reconciliation scheme the victims' rights to truth, justice and reparation must be maintained. On 1 December 2005, the Working Group called upon all States where amnesties or similar measures have been approved, implemented or are being considered to take account of the general comment and to align their domestic legislation and practice with the guidelines provided in the general comment, to preclude impunity for the crime of enforced disappearance.

67. At its seventh-fifth session, the Working Group decided to commission a comparative study on the criminal law treatment of enforced or involuntary disappearances in States around the globe. Article 4 of the Declaration requires that States treat all acts of enforced disappearance as "offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". The Working Group sent a note verbale inviting all Governments to provide information concerning the treatment of enforced or involuntary disappearances within their national law. Of the 18 Governments which responded to the invitation, many provided very detailed information. The Working Group is currently finalizing the study, and it will be submitted to the Human Rights Council in the near future.

68. In a submission prepared by the Working Group for the present report, the following seven obstacles to the realization of the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance were identified: (a) lack of political will on the part of some Governments to address the problem of disappearances, leading to cases not being investigated or suspected perpetrators not being prosecuted, and as a result families of disappeared persons not approaching authorities to investigate cases; (b) lack of effective legislative, administrative, judicial and other necessary measures to prevent and terminate acts of enforced disappearances, such as not defining enforced disappearance as a separate crime or not punishing it appropriately, most commonly in States where there are no official up-to-date registers of persons deprived of their liberty or no centralized registers; (c) lack of implementation of international human rights instruments, as well as a failure to harmonize domestic law with international human rights law, leading to non-implementation of the provisions of the Declaration and precluding the proper

international responsibility of States; (d) lack of attention to cases of enforced disappearances, and an underdeveloped level of general human rights awareness; (e) a limited number of NGOs in some countries, leading to a lack of promotion of human rights; (f) lack of promotion of the Declaration by States among their citizenry, and (g) the guise of combating terrorism being used as justification for the non-implementation of the provisions of the Declaration.

69. The Working Group also identified ways of overcoming the above-mentioned obstacles to the realization of the provisions of the Declaration. According to the Working Group, the General Assembly and the Council on Human Rights must (a) urge all Governments to fulfil their international obligations under the Declaration; (b) recommend the ratification by all States of the International Convention for the Protection of All Persons from Enforced Disappearance; (c) request all States to create up-to-date public, centralized registers of all persons deprived of their liberty; (d) urge States to establish rules under their national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention; (e) request each State to ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehension, arrest, detention, custody, transfer and imprisonment, and of other officials authorized by law to use force and firearms; and (f) urge States to respect human rights while combating terrorism.

70. The Working Group encourages the Office of the High Commissioner for Human Rights to (a) help the States in question through technical cooperation to overcome complex obstacles in developing democracy and human rights awareness; (b) create programmes for the promotion of the Declaration, especially in those States where there are considerable obstacles to its implementation; (c) organize training sessions on the implementation of the Declaration for law enforcement officials, the judiciary and other relevant governmental officials; (d) help States to establish independent human rights institutions; (e) give every possible assistance to States to strengthen the development of independent non-governmental organizations and to enhance their capacity to address problems of disappearance in the country, and (f) help, in cooperation with States, in the creation of human rights education programmes, including the issue of enforced disappearances, thereby enhancing the level of human rights awareness in the country.

71. Finally, the Working Group on Enforced or Involuntary Disappearances recommends that (a) States harmonize their domestic laws with the Declaration, and with international human rights law generally; and that (b) through targeted development initiatives, the international community promote economic and social development in all those States where there are considerable obstacles to the implementation of the Declaration.

IV. Intersessional open-ended working group to elaborate a legally binding instrument on enforced disappearances

72. The fifth and final session of the intersessional open-ended working group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances took place from 12 to 23 September 2005. At the end of the

discussions, the Chairperson of the Working Group said that there had been no objection to the transmission of the draft instrument to the Commission and that negotiations within the Working Group were thus concluded.

73. On 29 June 2006, in resolution 2006/1, the Human Rights Council adopted the International Convention for the Protection of All Persons from Enforced Disappearance, as annexed to the resolution. In the resolution, the Council also recommended to the General Assembly the adoption of a resolution to adopt the International Convention.

V. Activities undertaken to promote the Declaration on the Protection of All Persons from Enforced Disappearance

74. During the period under review, the United Nations Department of Public Information carried out activities to promote the Declaration on the Protection of All Persons from Enforced Disappearance as part of an overall communications strategy to publicize the work of the United Nations in the field of human rights.

75. The UN News Centre, one of the most heavily visited segments of the United Nations website, which the Department manages, continued to carry stories on a broad range of issues and developments related to enforced or involuntary disappearances, including press releases, which were picked up by an increased number of external websites, including those of media outlets and non-governmental organizations. Stories relating to enforced or involuntary disappearances were also distributed through the associated e-mail news service (English and French) to over 43,500 subscribers worldwide.

76. United Nations Radio produced news stories on the twenty-fifth anniversary of the Working Group on Enforced or Involuntary Disappearances, its Bangkok session and the International Day of the Disappeared (30 August). It also produced a news story on abduction as well as interviews with two special rapporteurs and a feature story on subjects relating to disappearances.

77. The United Nations Information Service (UNIS) at Geneva also attaches special importance to the promotion of the entire human rights programme. In 2005, UNIS Geneva made available five press releases in English and French on the Working Group on Enforced or Involuntary Disappearances. In addition, the spokesperson for the Office of the High Commissioner for Human Rights attended the UNIS Director's press briefings to update correspondents, whenever necessary, on the Working Group's activities.

78. In view of the fact that no substantive work was undertaken by the outgoing Commission on Human Rights and, in particular, that the draft convention on the protection of all persons from enforced disappearance was not adopted, UNIS Geneva organized and chaired a press conference on 29 March 2006, which aimed to ensure that the draft convention would be included in the programme of work of the inaugural session of the newly created Human Rights Council. Panel participants included the Permanent Representatives of Argentina, Belgium, Chile, Spain, France and Mexico, as well as spokespersons for the International Committee of the Red Cross, Amnesty International and the International Federation of Human Rights Leagues. UNIS Geneva prepared and distributed a summary of the press conference to the members of the press. On 31 March 2006, UNIS Geneva issued a statement

from the Working Group on Enforced or Involuntary Disappearances calling for approval of the draft convention by the General Assembly at its next session.

79. The text of the Declaration on the Protection of All Persons from Enforced Disappearance is made available to journalists, NGOs and the public upon request at United Nations Headquarters, Geneva, and throughout the network of United Nations Information Centres and Services.